The complete ouster of the States' jurisdiction over interstate commerce injuries effected by the enactment of FELA extends to the coercive provisions of the Workmen's Compensation Law but not to the permissive provisions contained in §113. Such was the holding of this Court in *South Buffalo R. Co.* v. *Ahern, supra.* Appellant presents no reason why the principle of *Ahern* is inapplicable to maritime injuries, as to which the supremacy of the maritime law is no more absolute than is FELA.

(2)

Appellant's Jurisdictional Statement mentions alleged misrepresentations to him by his employer. The record shows that from August 3, 1960 to the termination of the hearing before the Workmen's Compensation Board in 1963, appellant was represented by his present attorneys, who are specialists in admiralty law (16). For reasons best known to them they continued to submit his claim for compensation to the Board until full payment of compensation was made to the appellant.

Appellant's submission to the Board's jurisdiction with the consent and, presumably, the advice, of his attorneys was untainted by fraud or overreaching. In *Heagney* v. *Brooklyn Eastern District Terminal,* 190 F. 2d 976 (2nd Cir., 1951), cert. den. 342 U. S. 920 (1952), the Court said (p. 978):

> "If there is ever to be any settlement of legal claims we feel that it must be in a case such as this where a claimant before an administrative board is adequately represented by counsel over a long period [from September 25, 1947 to January 6, 1949], during which the

> rights, potential and actual, of the client are perfectly obvious to anyone with the slightest legal training, and *where there is no suggestion of fraud or concealment from the lawyer on the part of the employer.*" (Emphasis supplied.)

(3)

The sole issue presented by the claimant's appeal--the constitutionality of Workmen's Compensation Law, §113—has been shown to be insubstantial. Treating appellant's papers as an application for a writ of certiorari (28 U. S. C., §2103), it is submitted that the application should be denied.

In 1962 the Legislature of the State of New York amended the Workmen's Compensation Law by eliminating from the coverage of that statute employees of the Department of Sanitation of the City of New York. Chapter 551 of the New York Laws of 1962 amended Workmen's Compensation Law, §3, subd. 1, which sets forth the employments to which the statute applies, by adding the following clause to §3, Group 17:

> "but employment in the department of sanitation of the city of New York in the sanitation service classification of the classified civil service of such city shall not be within the coverage of this chapter."

The amendment of the statute renders this case "episodic" (*Rice* v. *Sioux City Cemetery,* 349 U. S. 70, 74 [1955]) and "of no importance save to the litigants themselves" (*Rudolph* v. *United States,* 370 U. S. 269, 270 [1962]). Under the circumstances, if appellant's papers be treated as an application for a writ of certiorari, the application should be denied.

CONCLUSION

The appeal should be dismissed.

August 9, 1965.

Respectfully submitted,

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